

GC/CJL:bhs

SSIC 3700

02-0756R

TO:

FROM: Sheila A. Albin, Associate General Counsel

SUBJ: Nonstandard Bylaw Amendments

DATE:

You have asked this office to review a request by a federal credit union (FCU) to amend its election bylaw so that members have the option of voting in-person at the annual meeting in addition to voting by electronic and mail ballots. We have no legal objections to the proposed amendments.

The FCU proposes several amendments to its election bylaw that create three ways for members to cast their vote for board members. FCU Bylaws, Art. V, Option A4. Members may use electronic ballots or they may request to vote by mail ballot. If they have not voted with electronic or mail ballots, they may vote at the annual meeting. In the attached memorandum to [] from me, dated December 18, 2000, we supported the Region's decision to approve a bylaw amendment that allowed for elections through electronic devices as well as ballot boxes. Like that amendment, the current proposal gives members a greater opportunity to participate in the election process and conforms to the basic standards set forth in the FCU Bylaws.

In requesting our review of the proposal, you noted two issues related to adding in-person voting to the FCU's current bylaw that we will briefly address. You stated that the proposed amendment does not allow for nominations from the floor. Option A4 does not permit nominations from the floor. Nominations may not be made from the floor when members can vote by electronic or mail ballot, even when they may also vote in-person, because electronic or mail ballot voters would not have the opportunity to consider those nominated from the floor. You also note that the proposal eliminates nomination language for other offices because members only vote for the board of directors. The FCU Bylaws state that an FCU only needs to address nominations for credit committee members, if applicable. FCU Bylaws, Option A4, Sec. 3(b).

Finally, the FCU proposes to remove the second sentence from Article V, Section 4. Section 4 reads in its entirety as follows:

Members cannot vote by proxy, but a member other than a natural person may vote through an agent designated in writing for the purpose. A trustee, or other person acting in a representative capacity, is not as such, entitled to vote.

FCU Bylaws, Art. V, Sec. 4. We have no objection to removing the second sentence. We have reviewed previous versions of the FCU Bylaws. The provision first appeared in the 1939 version of the FCU Bylaws and stated only "A trustee, as such, may not have a vote." The current version first appeared in the 1948 version of the FCU Bylaws. We have also reviewed some very old legal opinions issued in the years before the 1948 version and have concluded that the second sentence reflects a prior legal view when FCU authority to establish trust accounts was limited to trust accounts for minors. Among other restrictions on these accounts at the time, the trustee had to be a member but was not entitled to vote. The provision is now outdated because we now recognize that a trust, as a legal entity, may qualify for membership in its own right. Also, we recognize that formal trust agreements generally provide that a trustee has the power to vote on behalf of a trust when the trust holds shares or stock that entitle the owner to vote.

Attachment